



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. 10/038,403

Applicant: Raymond W. COLES

Filing Date: January 2, 2002

For: A METHOD OF FORMING AN IMAGE, AND A PRODUCT HAVING AN IMAGE FORMED THEREON

Art Unit: 1762

Examiner: Unassigned

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"CERTIFICATE OF EXPRESS MAIL" EV047870985US

DATE OF DEPOSIT: May 28, 2003

I, William D. McSpadden, hereby certify that this paper or fee is being deposited with the United States Postal Service with sufficient postage "VIA EXPRESS MAIL POST OFFICE TO ADDRESSEE" service under 37 C.F.R. 1.10 on, or before the date indicated above and is addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

William D. McSpadden
(Signature)

May 28, 2003
(Date of Signature)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. 1.137(B) TO REVIVE UNINTENTIONALLY
ABANDONED PATENT APPLICATION**

Applicant hereby petitions the Commissioner to revive the above mentioned patent applicatiton that was unintentionally abandoned. In accordance with 37 C.F.R. § 1.137(b), a

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Declaration of William D. McSpadden and a Declaration of Irene Keselman are included with this filing to establish the pertinent facts of this case.

I. ARGUMENT

The Manual of Patent Examining Procedure states that when a patent application is unintentionally abandoned for failure to file a timely response, it can be revived. M.P.E.P. § 711.03(c). Specifically, the M.P.E.P. states that a petition to revive must include:

- a) the required reply, unless previously filed;
- b) the petition fee as set forth in 37 C.F.R. § 1.17(m);
- c) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. 1.137(b) was unintentional; and
- d) any terminal disclaimer required pursuant to 37 C.F.R. 1.137(d).

Id. For the reasons stated below, each of these requirements is met by this petition.

This application was initially filed by Mitchell Brook, an attorney in the San Diego office of Baker & McKenzie, on January 2, 2002. Shortly thereafter, on February 1, 2002, responsibility for this file was transferred from the San Diego office of Baker & McKenzie to the New York office of Baker & McKenzie. Keselman Decl. ¶ 4. On February 5, 2002, the U.S. Patent Office mailed a Filing Receipt and Notice to File Missing Parts to the San Diego office of Baker & McKenzie. *See* Exhibit A. Unfortunately, these documents were not received by the New York office of Baker & McKenzie. Keselman Decl. ¶ 6. As a result, neither the Filing Receipt nor the Notice to File Missing Parts was entered into the docket system in the New York office. *Id.* A copy of a docket report, which indicates that that no Filing Receipt or Notice to File Missing Parts was ever docketed by the New York office, is enclosed with this Petition as Exhibit B.


On March 17, 2003, responsibility for this application was transferred from the New York office of Baker & McKenzie to the Dallas office of Baker & McKenzie. Keselman Decl. ¶ 7; McSpadden Decl. ¶ 4. Upon receiving the file, it was discovered that a Filing Receipt had never been received for this case and a call was placed to the Office of Initial Patent Examinations to inquire as to its status. McSpadden Decl. ¶ 5. On March 27, 2003, the Patent Office faxed a copy of the Filing Receipt and Notice to File Missing Parts, which had been mailed to the San Diego office of Baker & McKenzie on February 5, 2002. *See* Exhibit C. This was the first time that we became aware that a Filing Receipt and Notice to File Missing Parts had been mailed by the U.S. Patent Office.

II. CONCLUSION

Based upon these facts, it is clear that the entire delay in filing the required reply from the original due date was the result of unintentional error. Furthermore, because this petition is being filed shortly after the discovery of the Notice to File Missing Parts, Applicant's attorneys have acted promptly upon discovery of the error. To complete the requirements for this petition, a Response to Notice to File Missing Parts and a check in the amount of \$1430.00 (\$1300.00 for this petition and \$130.00 for late filing of the declaration) are enclosed with this filing. In the event that this check is not sufficient to cover the cost of this petition, the Commissioner is authorized to charge any deficiencies to Deposit Account No. 13-0480, Attorney Docket No. 24141761.3.

If there are any questions regarding this Petition under 37 C.F.R 1.137(b) to Revive Unintentionally Abandoned Patent Application, please contact the Applicant's attorney at the below-listed telephone number.

Respectfully submitted,


William D. McSpadden
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May 28, 2003
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